

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYBESTOS PRODUCTS COMPANY
Crawfordsville, Indiana,

Defendant.

1 : 07-cv-0374-DTH-TAB

Civil Action No. _____

Judge _____

CONSENT DECREE

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_____)

CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Shelly Ditch Reach 4 Superfund Site (“Reach 4 Site”), Shelly Ditch Site (“Reaches 1-3 Site”), and Sugar Creek Remedial Site in Crawfordsville, Montgomery County, Indiana, and the Calumet Containers Site in Hammond, Lake County, Indiana (collectively “the Sites”).

B. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. This Consent Decree in conjunction with the attached Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement) included in Attachment A that Settling Defendant has entered into, addresses Settling Defendant’s liability and obligations for past and future costs at the four Sites identified in Paragraph I.A.

D. Settling Defendant has already completed a time-critical removal at the Reaches 1-3 Site, pursuant to the Unilateral Administrative Order issued by U.S. EPA in December 2000.

This work was completed in July 2003. The factual background relating to the cleanup of the Reaches 1-3 Site is discussed in Section IV (Findings of Fact) in the Settlement Agreement included in Attachment A.

E. Pursuant to the Settlement Agreement included in Attachment A, Settling Defendant has agreed to perform a removal action at the Reach 4 Site and pay all Future Response Costs for the Response Action for the Reach 4 Site.

F. The Calumet Containers Site is located in Hammond, Lake County, Indiana. Based on a review of records and information relating to the Calumet Containers Site, an entity related to Settling Defendant sent one shipment to the Calumet Containers Site.

G. The Sugar Creek Remedial Site, is located in and adjacent to Montgomery County, Indiana. In May 2004, Settling Defendant, with U.S. EPA oversight, conducted sampling for polychlorinated biphenyls (PCBs) in Reach 5 of Shelly Ditch and in Sugar Creek downstream of where Reach 5 converges with Sugar Creek. The sampling indicates that the PCB contamination that exists in Reach 5 and in Sugar Creek, downstream of Reach 5's confluence with Sugar Creek, is predominately under 1ppm with the highest sampling result being 1.4ppm.

H. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any attachment attached hereto, the following definitions shall apply:

- a. "Calumet Containers Site" shall mean the Calumet Containers Site located in Hammond, Lake County, Indiana, and depicted generally on the map included in Attachment B.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- c. "Consent Decree" shall mean this Consent Decree and all appendices and attachments attached hereto. In the event of conflict between this Consent Decree and any appendix or attachment, the Consent Decree shall control.
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "Future Response Costs for the Response Action for the Reach 4 Site" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA incurs in reviewing or developing plans, reports, and other items pursuant to the attached Settlement Agreement included in Attachment A, verifying the Work, or otherwise implementing, overseeing, or enforcing the Settlement Agreement included in Attachment A after June 1, 2006, plus accrued interest.
- i. "Future Response Costs for the Response Action for the Reaches 1-3 Site" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA will expend at or in connection with the Reaches 1-3 Site after August 29, 2003, plus accrued interest on all such costs. "Future Response Costs for the Response Action for the Reaches 1-3 Site" does not include any and all costs, including but not limited to costs incurred responding to subpoenas, depositions, and trial preparation, incurred by the EPA or the United

States with respect to the matter of Raybestos Products Company v. The Indiana Department of Environmental Management, Docket No. 49D12-0209-PL-001553.

j. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

l. “Parties” shall mean the United States and Settling Defendant.

m. “Past Response Costs for the Response Action for the Reach 4 Site” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Reach 4 Site between May 5, 2003, and June 1, 2006, plus accrued Interest on all such costs.

n. “Past Response Costs for the Response Action for the Reaches 1-3 Site” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Reaches 1-3 Site through August 29, 2003, plus accrued Interest on all such costs through such date. “Past response costs for the Response Action for the Reaches 1-3 Site” does not include any and all costs, including but not limited to costs incurred responding to subpoenas, depositions, and trial preparation, incurred by the EPA or the United States with respect to the matter of Raybestos Products Company v. The Indiana Department of Environmental Management, Docket No. 49D12-0209-PL-001553, or any costs incurred for the Reaches 1-3 Site after August 29, 2003.

o. “Plaintiff” shall mean the United States.

p. “Reach 4 Site” shall mean the Shelly Ditch Reach 4 Superfund Site, encompassing approximately 6 acres, located at Shelly Ditch from Whitlock Avenue west to the culvert under the CSX railroad tracks approximately 1,700 feet to the west of Whitlock Avenue in Crawfordsville, Montgomery County, Indiana, and depicted generally on the map attached as Attachment C.

q. “Reaches 1-3 Site” shall mean the Shelly Ditch Superfund Site, encompassing approximately 16 acres, located at Shelly Ditch from the Conrail Railroad tracks near the Raybestos Products Company plant located at 1204 Darlington to Whitlock Avenue in Crawfordsville, Montgomery County, Indiana, and depicted generally on the map included in Attachment C.

- r. “Response Action” shall mean the terms “removal” or “remedial action” as defined in Section 101 of CERCLA, 42 U.S.C. § 9601.
- s. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- t. “Settlement Agreement” shall mean the Administrative Settlement Agreement and Order on Consent for Removal Action for the Reach 4 Site included in Attachment A.
- u. “Settling Defendant” shall mean Raybestos Products Company, its parent, its officers, directors, successors, and assigns, but only to the extent that the alleged liability of its parent, officer, director, successor, and assign is based solely on its status as and in its capacity as the parent, officer, director, successor, and assign.
- v. “Sites” shall collectively refer to the Reach 4 Site, Reaches 1-3 Site, Sugar Creek Remedial Site, and the Calumet Containers Site.
- w. “Sugar Creek Remedial Site” shall mean the Sugar Creek Remedial Site which for purposes of this Consent Decree includes Reach 5 of Shelly Ditch in Crawfordsville, Montgomery County, Indiana as depicted generally on the map included in Attachment C, and the waterways including Sugar Creek, Walnut Fork, and Little Sugar Creek in and adjacent to Crawfordsville, Montgomery County, Indiana to the extent that they are depicted on the map included in Attachment D.
- x. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

- 4. Payment of Past Response Costs for the Response Action for the Reach 4 Site to EPA.
Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to EPA \$119,519.18, plus an additional sum for Interest on that amount calculated from June 1, 2006 through the date of payment.
- 5. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office in the Southern District of Indiana, Indianapolis Division, following lodging of the Consent Decree.
- 6. At the time of payment of the Past Response Costs for the Response Action for the Reach 4 Site, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number B5J3, DOJ case number _____, and the civil

action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the Shelly Dich Reach 4 Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Reach 4 Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 4 (Payment of Past Response Costs for the Response Action for the Reach 4 Site) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalties.

a. If any amounts due under Paragraph 4 is not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, a stipulated penalty, in addition to the Interest required by Paragraph 8, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number B5J3, DOJ Case Number _____, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

U.S. EPA - Region 5
P. O. Box 371531
Pittsburgh, PA 15251-7531

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number B5J3, DOJ Case Number _____, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous

accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

13. Covenant Not to Sue by United States for Reach 4 Site. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs for the Reach 4 Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs for the Response Action for the Reach 4 Site), and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree and the Settlement Agreement included in Attachment A. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

14. Covenant Not to Sue by United States for Reaches 1-3 Site, Sugar Creek Remedial Site, and Calumet Containers Site. In further consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree and the Settlement Agreement included in Attachment A, and except as specifically provided in Paragraphs 15-18 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), to recover Past or Future Response Costs at the Sugar Creek Remedial Site and Calumet Containers Site, or to recover Past Response Costs at the Reaches 1-3 Site. In addition, the United States covenants not to take administrative action against Settling Defendant pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to require Settling Defendant to perform any Response Action, beyond those already ordered or agreed to, relating to Sugar Creek Remedial Site and the Calumet Containers Site, except as provided for in Paragraphs 15-18. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 4 of Section V (Payment of Past Response Costs for the

Response Action for the Reach 4 Site) and any amount due under Section VI (Failure to Comply with Consent Decree). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree and the Settlement Agreement included in Attachment A. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

15. United States' Reservations/Reopener. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant, with respect to the Reaches 1-3 Site or Reach 4 Site

- a. to perform further response actions relating to the above two sites, or
- b. to reimburse the United States for additional costs of response if:

- (1) conditions at the sites, previously unknown to EPA, are discovered; or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Response Actions are not protective of human health or the environment.

16. United States' Reservations/Reopener. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant, with respect to the Sugar Creek Remedial Site and Calumet Containers Site

- a. to perform further response actions relating to the above two Sites, or
- b. to reimburse the United States for additional costs of response if:
 - (1) conditions at the sites, previously unknown to EPA, are discovered; and
 - (2) information, previously unknown to EPA, is received, in whole or in part that indicates that Settling Defendants contributed to any such conditions described above,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Response Actions or conditions are not protective of human health or the environment. The United States can invoke this Paragraph only if Defendant disposed of hazardous substances that entered the Sugar Creek Remedial Site or the Calumet Containers Site.

17. For purposes of Paragraphs 15 and 16 the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date this Consent Decree was entered.

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraphs 13 and 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs for the Reach 4 Site or Reaches 1-3 Site;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. with respect to Reaches 1-3 and Shelly Ditch in general, this Consent Decree does not release Raybestos from liability for addressing hazardous waste, including but not limited to PCBs and lead, that are located under the Conrail Railroad tracks just west of the Raybestos Products Company facility and from the western extent of the Conrail Railroad area, where the culvert pipe under the tracks enters Shelly Ditch, to the Raybestos facility boundary to the east; and

g. with respect to Reaches 1-3, this Consent Decree does not release Settling Defendant from any and all costs, including but not limited to costs incurred responding to subpoenas, depositions, and trial preparation, incurred by the EPA or the United States with respect to the matter of Raybestos Products Company v. The Indiana Department of Environmental Management, Docket No. 49D12-0209-PL-001553, or any costs incurred for the Reaches 1-3 Site after August 29, 2003.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

19. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the response actions Raybestos conducted at the Reaches 1-3 Site pursuant to the Unilateral Administrative Order issued by EPA in December 2000 and modified in January 2001, and Past and Future Response Costs for the Sites, the Settlement Agreement included in Attachment A, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Sites for which the Past and Future Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Indiana, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past and Future Response Costs.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Reaches 1-3 Site, Reach 4 Site, Sugar Creek Remedial Site, and Calumet Containers Site, including for contribution, against any person where the person's liability to Settling Defendant with respect to the Sites is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Sites, or having accepted for transport for disposal or treatment of hazardous substances at the Sites, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Sites was less than 110 gallons of liquid materials or 200 pounds of solid materials.

22. The waiver in Paragraph 21 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Sites against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is

impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Sites, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Sites by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Sites.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided in Paragraph 21 (Non-Exempt De Micromis Waiver), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 21 (Non-Exempt De Micromis Waiver), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past and Future Costs and Response Costs at the Sugar Creek Remedial Site and Calumet Containers Site, and Past Costs at the Reach 4 Site and Reaches 1-3 Site. Further, “matters addressed” includes any administrative action against Settling Defendant pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to require Settling Defendant to perform any Response Action, beyond those already ordered or agreed to, relating to Sugar Creek Remedial Site and the Calumet Containers Site, except as provided for in Paragraphs 15-18. Future Response Costs for the Response Action for the Reach 4 Site are addressed in the Settlement Agreement included in Attachment A.

25. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Reaches 1-3 Site,

Reach 4 Site, Sugar Creek Remedial Site, and Calumet Containers Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

XI. SITES ACCESS

27. If the Sites, or any other property where access is needed to implement response activities at the Sites, is owned or controlled by the Settling Defendant, it shall, commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and contractors, with access at all reasonable times to the Sites, or to such other property, for the purpose of conducting any response activity related to the Sites, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial, or other activities at the Sites;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Sites;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing response actions at or near the Sites;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XII (Access to Information); and

7. Assessing Settling Defendant's compliance with this Consent Decree and the Settlement Agreement included in Attachment A.

28. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

29. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as “records”) within their possession or control or that of its contractors or agents relating to activities at the Sites or to the implementation of this Consent Decree and the Settlement Agreement included in Attachment A, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Sites.

30. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant’s favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Sites shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

XIII. RETENTION OF RECORDS

32. Until 10 years after the entry of this Consent Decree, the Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Sites or the liability of any person under CERCLA with respect to the Sites, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Sites shall be withheld on the grounds that they are privileged.

34. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Sites since notification of potential liability by the United States or the State or the filing of suit against it regarding the Sites and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XIV. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # _____)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Robert H. Smith
Associate Regional Counsel
U.S. EPA
77 W. Jackson Blvd.(C-14J)
Chicago, IL 60604

Fredrick Mieke
On-Scene Coordinator
U.S. EPA
77 W. Jackson Blvd.(SE-5J)
Chicago, IL 60604

As to Settling Defendants:

Joe Madonia
Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229

XV. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

37. This Consent Decree and its appendices and attachments constitute the final, complete, and exclusive agreement and understanding among the Defendant with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following attachments are attached to and

incorporated into this Consent Decree: “Attachment A” is the Settlement Agreement for the Reach 4 Site; “Attachment B” is the map that depicts the Calumet Containers Site; “Attachment C” is the map that depicts both the Reaches 1-3 Site and Reach 4 Site, as well as Reach 5 of Shelly Ditch; and “Attachment D” is the map that depicts the waterways including Sugar Creek, Walnut Fork, and Little Sugar Creek in and adjacent to Crawfordsville, Montgomery County, Indiana, that, along with Shelly Ditch, make up the Sugar Creek Remedial Site.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

39. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

40. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

42. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.”

XVII. FINAL JUDGMENT

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Raybestos Products Company, relating to the Shelly Ditch Reach 4, Shelly Ditch Site ("Reaches 1-3 Site"), and Sugar Creek Remedial Site in Crawfordville, Montgomery County, Indiana, and the Calumet Containers Site in Hammond, Lake County, Indiana Superfund Sites.

FOR THE UNITED STATES OF AMERICA

Date: 3/6/07



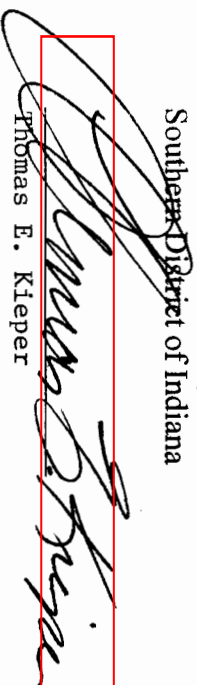
W. Benjamin Fisher
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 3/6/07



Henry Friedman
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

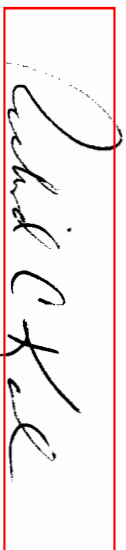
Date: 3/21/07



Susan W. Brooks
United States Attorney
Southern District of Indiana
Thomas E. Kleper
Assistant United States Attorney
10 West Market Street
Suite 2100
Indianapolis, IN 46204

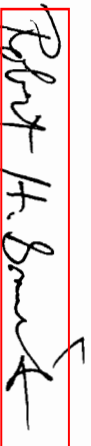
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Date: 2-22-07



Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd (Mail Code S-6J)
Chicago, IL 60604

Date: 1/29/07



Robert H. Smith
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd (Mail Code C-14J)
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Raybestos Products Company, relating to the Shelly Ditch Reach 4, Shelly Ditch Site ("Reaches 1-3 Site"), and Sugar Creek Remedial Site in Crawfordsville, Montgomery County, Indiana, and the Calumet Containers Site in Hammond, Lake County, Indiana Superfund Sites.

FOR DEFENDANT RAYBESTOS PRODUCTS
COMPANY

Date: Jan 11, 2007

Name: *Barbara C. Anderson*
Address: *Barbara C. Anderson*
711 Tech Drive
Crawfordsville, IN 47933

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: *Barbara C. Anderson*

Title: *General Counsel*

Address: *711 Tech Drive*

Crawfordsville, IN

47933

CONSENT DECREE

ATTACHMENT A

Administrative Settlement Agreement and Order on Consent for
Removal Action for the Reach 4 Site

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

ADMINISTRATIVE SETTLEMENT

RAYBESTOS PRODUCTS COMPANY

AGREEMENT AND ORDER ON

Crawfordsville, Indiana,

CONSENT FOR REMOVAL ACTION

RESPONDENT

Docket No. _____

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Respondent. This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at Reach 4 of Shelly Ditch in Crawfordsville, Montgomery County, Indiana, the "Shelly Ditch Reach 4 Site" or the "Reach 4 Site."

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended ("CERCLA"). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Indiana (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. U.S. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondent and it's successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that it's contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.
- c. "Future Response Costs for the Response Action for the Reach 4 Site" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement after June 1, 2006.
- d. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- f. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any attachment, this Settlement Agreement shall control.
- g. "Parties" shall mean U.S. EPA and Respondent.
- h. "Past Response Costs for the Response Action for the Reach 4 Site" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Reach 4 Site between May 5, 2003 and June 1, 2006.
- i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

- j. “Respondent” shall mean Raybestos Products Company.
- k. “Reach 4 Site” shall mean the Shelly Ditch Reach 4 Superfund Site, encompassing approximately 6 acres, located at Shelly Ditch from Whitlock Avenue west to the culvert under the CSX railroad tracks approximately 1,700 feet to the west of Whitlock Avenue in Crawfordsville, Montgomery County, Indiana, and depicted generally on the map attached as Attachment A, and in the map in the Reach 4 Conceptual Cleanup Plan, attached as Attachment B.
- l. “State” shall mean the State of Indiana.
- m. “U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- n. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any “hazardous material” under State law and regulations.
- o. “Work” shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

- 8. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:
 - a. The Shelly Ditch is an intermittent stream that accepts surface runoff from the northeast sector of the Town of Crawfordsville, Indiana. Shelly Ditch is approximately 6,200 feet long and ultimately discharges into Sugar Creek.
 - b. Sugar Creek is designated as a “full-body contact” water body and as an “expected use” stream by the Indiana Department of Natural Resource (IDNR). Fish tissue samples collected during November 1999, from the Crawfordsville area in Sugar Creek, resulted in the issuance of a Group 5 Fish Consumption Advisory (all fish species, no consumption allowed).
 - c. Three culverts, or out falls, located on the west perimeter of the Respondent’s facility at 1204 Darlington Avenue, Crawfordsville, Indiana 4793 empty into Shelly Ditch. The facility, established in 1951, manufactures friction plates for automatic transmissions.
 - d. Shelly Ditch is bordered on the north and south by residences and light commercial / industrial properties, to the east by the Raybestos facility and a railroad embankment and tracks operated by Conrail Railroad, and to the west by Sugar Creek.

e. On November 7 and 8, 1995, the Indiana Department of Environmental Management (IDEM) collected samples in the Shelly Ditch to be used as background samples for the Crawfordsville Scrap & Salvage site. Chemical analysis revealed elevated levels of polychlorinated biphenyls (PCBs) at 410 parts per million (ppm) and lead at 2,300 ppm.

f. In February and March 1996, IDEM collected additional samples in the Shelly Ditch. The samples documented the release of PCBs and high lead levels at the Raybestos plant outfalls.

g. On October 2, 1998, October 20, 1998, November 4, 1998, May 21, 1999, and August 5, 1999, IDEM inspectors collected samples from Respondent's outfall discharges and culverts that lead to Shelly Ditch. Analysis of these samples showed that PCBs (specifically Aroclor 1248) were present.

h. On May 8, 2000, U.S. EPA performed a site assessment along Shelly Ditch and collected twenty-eight soil/sediment samples along the length of ditch. Shelly Ditch was divided into five (5) reaches, as part of this site assessment. Chemical analysis revealed elevated concentrations of PCBs and lead from many of the samples. The highest concentration of lead was 4,990 ppm and PCB Aroclor-1248 at 4,730 ppm.

i. In December 2000, U.S. EPA issued Respondent a Unilateral Administrative Order, which was modified in January 2001, to require removal work in only Reaches 1 to 3 of the Shelly Ditch. Raybestos agreed to comply with the modified UAO. This UAO has been complied with by Raybestos with the work being completed in July 2003.

j. Reach 4 of Shelly Ditch has been sampled on several occasions (April and July 1996; September 1996; April 1999; and April 2001). Additional sampling to further delineate the contamination in Reach 4 was performed by Raybestos in April 2005. Analytical results from the samples collected from Reach 4 of Shelly Ditch confirm the presence of lead and PCBs, mostly Aroclor-1248, at concentrations above the cleanup goals of 10 ppm for total PCBs and 400ppm for lead. The maximum reported concentrations were 170 ppm for PCBs and 833 ppm for lead.

k. Reach 5 of Shelly Ditch, which is not addressed in this Settlement Agreement, runs from the railroad trestle to the confluence with Sugar Creek. Reach 5 was sampled in May 2004 and no PCB concentrations above 1.4 ppm were detected within Reach 5 or in Sugar Creek downstream of its confluence with Shelly Ditch.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

- a. The Shelly Ditch Reach 4 Superfund Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The PCBs and lead contamination found at the Reach 4 Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. The Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent arranged for disposal or transport for disposal of hazardous substances at the Shelly Ditch Reach 4 Superfund Site. Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility into the “environment” as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8).
- f. The conditions present at the Reach 4 Site may constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (“NCP”), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:
 - i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Reach 4 Site due to the existence of lead and polychlorinated biphenyls (PCBs) in areas near residential homes
 - ii. The presence of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Reach 4 Site due to the existence of lead (833 ppm) and PCBs (170 ppm) detected at the Reach 4 Site during sampling events.
 - iii. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Reach 4 Site due to the existence of lead and PCBs along the length of Shelly Ditch, Reaches 1 to 4. During times of heavy rainfall, flow through Shelley Ditch increases, and, subsequently, the possibility of contaminants being transported downstream into Sugar Creek may exist.

g. The removal action required by this Settlement Agreement will protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Reach 4 Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

10. Respondent shall retain one or more general contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within 5 business days of the Effective Date. Respondent shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 15 business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with ANS/IASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

11. Within 10 business days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Reach 4 Site or readily available during Reach 4 Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 15 business days following U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

12. U.S. EPA has designated Fredrick A. Micke of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at U.S. EPA, 77 W. Jackson Blvd. (SE-5J), Chicago, IL 60604. Respondents is encouraged to make it's submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

13. U.S. EPA and Respondent shall have the right, subject to Paragraph 11, to change it's respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VII. WORK TO BE PERFORMED

14. Respondent shall perform, at a minimum, the following removal activities:

- a. Develop and implement a Reach 4 Site-specific Health and Safety Plan.
- b. Develop and implement a Quality Assurance Project Plan for sampling and analytical requirements.
- c. Establish and maintain Reach 4 Site security to the extent not already established. Obtain necessary support services/utilities.
- d. Respondent has already performed soil and sediment sampling and chemical analysis of Shelly Ditch Reach 4, the flood plain and potentially affected residential property as necessary to fully delineate the extent of contamination, but will conduct additional sampling and analysis if it finds it necessary.
- e. Work with the local government and the surrounding community in formulating a plan to appropriately clear and grub areas requiring excavation.
- f. As set forth in the Reach 4 Conceptual Cleanup Plan, attached as Attachment B, and in the Work Plan, remove contaminated soil and sediment from the Reach 4 Site roughly described as, Shelly Ditch from between the outlet of the culvert at Whitlock Street (end of Reach 3) and the inlet of the culvert at the CSX railroad grade. All soil and sediment determined, through the previous sampling, any new sampling pursuant to Paragraph 14.d., or confirmatory sampling described in Attachment B and the Work Plan, to be above the cleanup level of 10 part per million (ppm) total PCBs and above 400 ppm for total lead, must be removed and securely staged pending off-site disposal. In the event there is any discrepancy between the final Work Plan and Attachment B, the Work Plan will be controlling.

g. Soil and sediment removed from the Reach 4 Site must be properly characterized and transported off-site for disposal. Material must be disposed of in compliance with U.S. EPA CERCLA Off-Site Disposal Rule (Section 300.440 of the NCP and 58 F.R. 49200). There is adequate landfill resources and capacity available in the immediate area for material to be disposed either as a TSCA waste or as a special waste.

h. Confirmation sampling and chemical analysis shall take place as the removal action progresses downstream. Samples must be collected based on a grid system in accordance with the plan set forth in Attachment B and as dictated by the approved Work Plan. In the event there is any discrepancy between the final Work Plan and Attachment B, the Work Plan will be controlling.

i. Air monitoring for contaminants of concern and nuisance dust must be conducted continuously throughout the removal action.

j. Public relations efforts shall be undertaken to inform home owners along the Reach 4 Site of the removal activities which may affect their property. These efforts shall include, but not be limited to, a mailing of notice prior to site mobilization, a mailing prior to commencement of work, and an availability session in Crawfordsville where the public can ask questions.

k. Upon removing contaminated soil and sediment, the excavation area shall be backfilled including appropriate placement of erosion control structures.

l. Upon completing backfill and grading activities, a restoration plan must be adopted and implemented (i.e. revegetation, replacement of private property and goods, etc.).

m. Any contaminated water generated as part of the removal action must be treated and disposed of accordingly.

15. Work Plan and Implementation.

a. Within 10 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 14 above. The draft Work Plan shall provide a description of, and a schedule for, the actions required by this Settlement Agreement. The Work Plan schedule will not require the actual earth moving work at Reach 4 to begin prior to August 15, 2007, unless both U.S. EPA and Respondent agree that an earlier start date is acceptable.

b. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with

modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to Paragraph 15(b).

16. Health and Safety Plan. Within 10 business days after the Effective Date, Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

17. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

18. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by U.S. EPA, Respondent shall submit a proposal for post-removal Reach 4 Site control consistent with Section 300.415(f) of the NCP and OSWER Directive No. 9360.2-02. Upon U.S. EPA approval, Respondent shall implement such controls and shall provide U.S. EPA with documentation of all post-removal Reach 4 Site control arrangements.

19. Reporting.

a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of U.S. EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports, or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

c. If Respondent owns any portion of the Reach 4 Site it shall, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Reach 4 Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

20. Final Report. Within 60 calendar days after completion of all Work required by Section VIII of this Settlement Agreement, Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a

statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

21. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Reach 4 Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by this Paragraph 21 as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Reach 4 Site to an off-site location, Respondent shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Reach 4 Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

22. If the Reach 4 Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, such Respondent shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Reach 4 Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

23. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use it's best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using it's best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing it's efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

24. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

25. Respondent shall provide to U.S. EPA, upon request, copies of all documents and information within it's possession or control or that of it's contractors or agents relating to activities at the Reach 4 Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, it's employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

26. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondent that the documents or information are not confidential under the standards

of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

27. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Reach 4 Site.

XI. RECORD RETENTION

29. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Reach 4 Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

30. At the conclusion of this document retention period, Respondent shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondent shall deliver any such records or documents to U.S. EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

31. The Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Reach 4 Site since notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Reach 4 Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

32. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Reach 4 Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Reach 4 Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

34. In addition, in the event of any release of a hazardous substance from the Reach 4 Site, Respondent shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of

the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

35. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Reach 4 Site. Absence of the OSC from the Reach 4 Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

36. Payment for Past Response Costs for the Response Action for the Reach 4 Site. Payment for Past Response Costs for the Reach 4 Site will be made by Respondent pursuant to the Consent Decree Respondent entered into with the United States, Civil Action No. _____.

This Settlement Agreement is attached and incorporated into the Consent Decree as Attachment A.

37. Payments for Future Response Costs for the Response Action for the Reach 4 Site.

a. Respondent shall pay U.S. EPA all Future Response Costs for the Response Action for the Reach 4 Site not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that consists of an Itemized Cost Summary. Respondent shall make all payments within 30 calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 38 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "U.S. EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and U.S. EPA Site ID number B5J3. Respondent shall send the check(s) to:

U.S. EPA - Region 5
P. O. Box 371531
Pittsburgh, PA 15251-7531

c. At the time of payment, Respondent shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Robert H. Smith, Associate Regional Counsel, 77 West Jackson Boulevard (C-14J), Chicago, Illinois, 60604-3590.

d. The total amount to be paid by Respondent pursuant to Paragraph 37(a) shall be deposited in the Shelly Ditch Reach 4 Superfund Site Special Account within the U.S. EPA

Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Reach 4 Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

38. In the event that the payment for Future Response Costs for the Response Action for the Reach 4 Site are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs for the Response Action for the Reach 4 Site shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

39. Respondent may dispute all or part of a bill for Future Response Costs for the Response Action for the Reach 4 Site submitted under this Settlement Agreement, only if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 37 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 37(c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

41. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs for the Response Action for the Reach 4 Site, it shall notify U.S. EPA in writing of its objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings

for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

42. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

43. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to it's contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondent shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure*, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

45. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the

obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondent in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

46. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 for failure to comply with the requirements of this Settlement Agreement specified below, unless agreed to by the parties or excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

47. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 47(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

b. Compliance Milestones:

- i. Payment of Future Response Costs for the Response Action for the Reach 4 Site pursuant to Paragraph 37.
- ii. Completion of removal of contaminated soil and sediment from the Reach 4 Site by the deadline established in the Work Plan.
- iii. Completion of confirmation sampling and chemical analysis based on a grid system by the deadline established in the Work Plan.
- iv. After removal of contaminated soil and sediment, backfilling of the excavation area including appropriate placement of erosion control structures by the deadline established in the Work Plan.

- v. After completing backfill and grading activities, adoption and implementation of a restoration plan (i.e. revegetation, replacement of private property and goods, etc.) by the deadline established in the Work Plan.

48. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 10, 11, 15, 16, 19, and 20:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$750	15th through 30th day
\$1,500	31st day and beyond

49. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 41 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

50. Following U.S. EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of the failure and describe the noncompliance. U.S. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondent of a violation.

51. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA - Region 5, P. O. Box 371531, Pittsburgh, PA 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site ID Number B5J3, the U.S. EPA Docket Number, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in Paragraph 37(c).

52. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

53. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

54. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 51. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(f) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(f), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(f) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

55. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs for the Response Action for the Reach 4 Site. This covenant not to sue shall take effect 60 days after the Effective Date of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs for the Response Action for the Reach 4 Site pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

56. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions

necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Reach 4 Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

57. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs for the Response Action for the Reach 4 Site;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Reach 4 Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Reach 4 Site.

XXI. COVENANT NOT TO SUE BY RESPONDENT

58. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs and Future Response Costs for the Response Action for the Reach 4 Site, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Reach 4 Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Reach 4 Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 57 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

59. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

60. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondent or it's directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

61. Except as expressly provided in Section XIX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

62. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

63.a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in

this Settlement Agreement are the Work and Future Response Costs for the Response Action for the Reach 4 Site.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs for the Response Action for the Reach 4 Site.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs for the Response Action for the Reach 4 Site.

Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

64. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

65. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

66. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Reach 4 Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Reach 4 Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

67. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

68. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 67.

69. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

70. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Future Response Costs for the Response Action for the Reach 4 Site, and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified

Final Report in accordance with the U.S. EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. FINANCIAL ASSURANCE

71. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$1,775,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Respondent; or
- e. A demonstration that the Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

72. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 71(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondent seeks to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 71(d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 71 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

73. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 71 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA. In the event of a dispute, Respondent

may reduce the amount of the security in accordance with the written decision resolving the dispute.

74. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVIII. SEVERABILITY/INTEGRATION/ATTACHMENTS

75. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

76. This Settlement Agreement and its attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following attachments are incorporated into this Settlement Agreement: Map of Shelly Ditch (Attachment A) and Reach 4 Conceptual Cleanup Plan (Attachment B).

XXIX. EFFECTIVE DATE

77. This Settlement Agreement shall be effective upon receipt by Respondent of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

SHELLY DITCH REACH 4 SUPERFUND SITE
CRAWFORDSVILLE, INDIANA

The undersigned representatives of Respondent each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this 11th day of January, 2007.

For Respondent
RAYBESTOS PRODUCTS COMPANY,

By (Signature) C

Printed Name Barbara C. Anderson

Title General Counsel & Secretary

It is so ORDERED and Agreed this 22 day of FEBRUARY, 2007

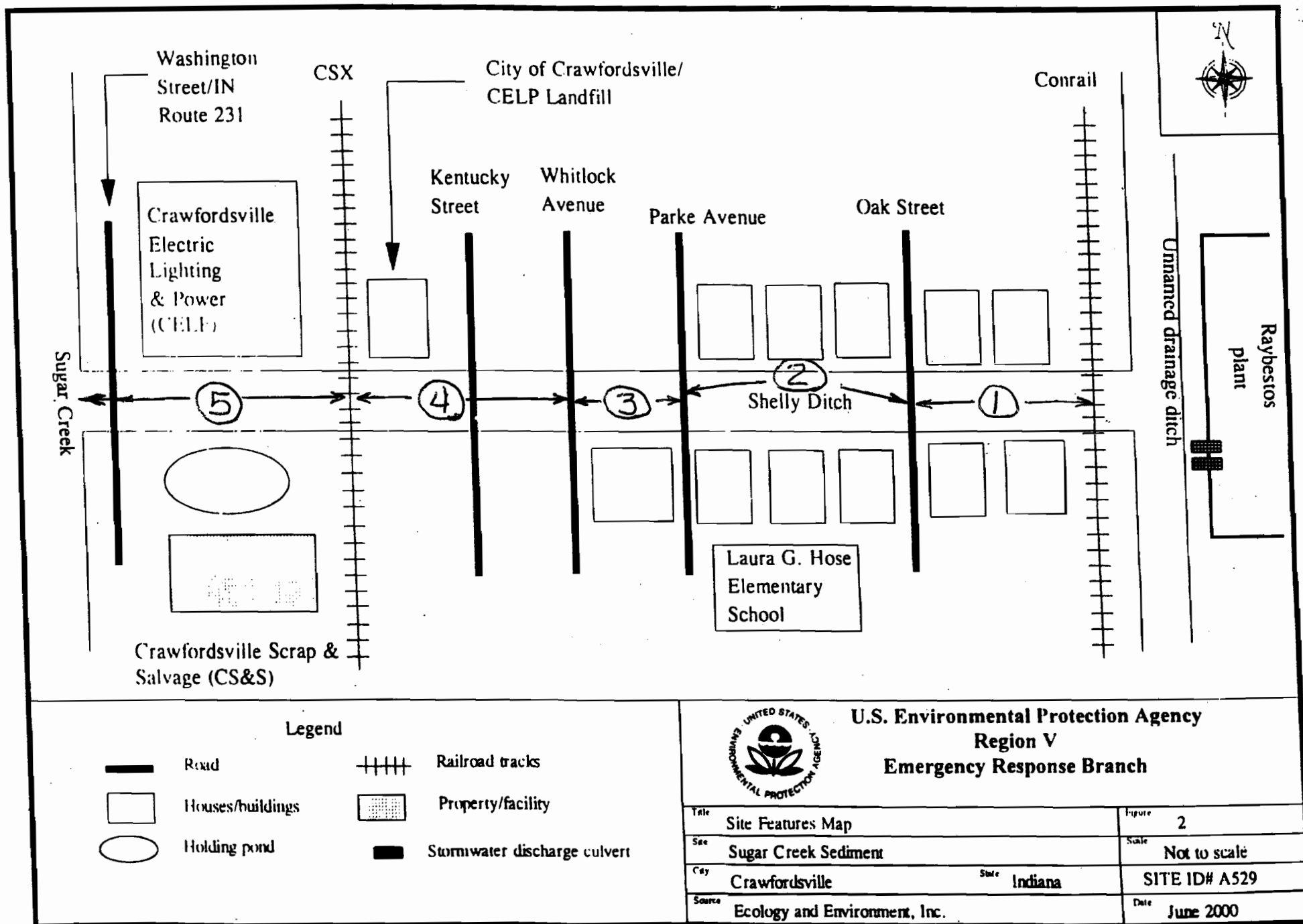
BY:

Richard C. Karl
Director
Superfund Division
United States Environmental Protection Agency
Region 5

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

ATTACHMENT A

Map of Shelly Ditch



ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

ATTACHMENT B

Reach 4 Conceptual Cleanup Plan

Reach 4 Conceptual Cleanup Plan

As requested by the U.S. Environmental Protection Agency (EPA), Raybestos Products Company (Raybestos) has prepared this conceptual approach for the removal action of PCB- and lead-contaminated soil and sediment in the Shelly Ditch Reach 4 (EPA letter, August 16, 2004 and teleconference April 26, 2006¹). This conceptual approach will be expanded into a time critical removal that will include supporting data and map locations. Reach 4 begins at the outlet of the culvert at Whitlock Street (end of Reach 3) and ends at the inlet of the culvert at the CSX railroad grade. As requested by EPA, the cleanup levels will be 10 ppm for total PCBs (summed total of any detected Aroclors[®]) and 400 ppm for lead. These cleanup levels are consistent with those used for remediation of Reaches 1 through 3. The following is a brief discussion of the areas affected by PCBs and lead and the proposed cleanup plan.

Areas Affected

Soil and sediment samples from Reach 4 analyzed for PCB and lead concentrations were collected during six sampling events: April and July 1996 (Heritage), September 1996 (Secor), April 1999 (IDEM), April 2001 (Secor), and April 2005 (Exponent). The data show that total PCB concentrations in floodplain soils exceed 10 ppm in five areas of the reach. From upstream to downstream, these stations and samples are as follows (Figure 1):

- Area 1 - 9R(10')² (0-6 in., 6-12 in., 12-18 in., 18-24 in., and 24-30 in.)
- Area 2a - 6.75L(10') (12-18 in.)
- Area 2b - 6R(12') (0-6 in. and 6-12 in.)
- 6L(8') (0-6 in. and 6-12 in.)
- Area 2c - 5.6R(25') (0-6 in., 6-12 in., and 12-18 in.)
- 5.5R(30') (0-6 in. and 6-12 in.)
- Area 2d - 5.6L(30') (0-6 in., 6-12 in., and 12-18 in.)
- 5.4L(20') (0-6 in., 6-12 in., and 12-18 in.)

¹ April 26, 2006, teleconference between Joe Madonia (Wildman, Harrold, Allen & Dixon LLP), Mark Johns (Exponent), Gary Brugger (Exponent), Rob Smith (EPA), and Fred Micke (EPA).

² The station number, for example 9R(10'), indicates that the sample was 10 ft from the center of the stream channel on the right side of the channel (looking upstream) at transect number 9. The numbered stations range from high to low, moving downstream. For example, station 9R(10') is upstream of station 6R(12'), and the stations beginning with SED generally increase in number moving downstream. For example, SED26 is upstream of SED27.

- Area 3a
 - 5R(6') (0-6 in., 6-12 in., and 12-18 in.)
 - 5R(15') (0-6 in. and 6-12 in.)
 - 5.2R(20') (0-6 in., 6-12 in., and 12-18 in.)
- Area 3b
 - 5L(35') (0-6 in., 6-12 in., and 12-18 in.)
 - 4.6L(19') (0-6 in., 6-12 in., and 12-18 in.)
- Area 4a
 - 3.75L(22') (0-6 in., 6-12 in.)
- Area 4b
 - 2.8R(17') (0-6 in., 6-12 in., and 12-18 in.)
- Area 4c
 - 2.8L(37') (0-6 in.)
 - 3L(12') (0-6 in.)
 - 3.2L(35') (0-6 in.)
- Area 5
 - SED26 (0-6 in.)
 - 2L(30') (6-12 in. and 12-18 in.)
 - 1.9L(10') (0-6 in. and 12-18 in.)
 - 1.7L(30') (12-18 in.)
 - SED27 (0-6 in., 6-12 in., and 12-18 in.)
 - 1L(24') (0-6 in. and 6-12 in.)
 - 1C (0-6 in.)
 - 1R(9') (0-6 in. and 6-12 in.)
 - 0.8R(22') (0-6 in. and 6-12 in.)
 - 0.5R(27') (0-6 in. and 6-12 in.)
- Area Pb1
 - 8.4C (0-6 in.), 630 ppm
- Area 2c
 - 5.6R(25') (0-6 in.), 725 ppm
 - 5.4L(20') (0-6 in.), 833 ppm
- Area Pb2
 - SED38 (0-6 in.), 740 ppm
- Area 5
 - 1L(24') (0-6 in.), 450 ppm.

Recommended Cleanup Plan

The data described above include the additional sampling event conducted by Exponent to better delineate the areas to be remediated (Exponent 2005³). Additional sampling stations were

³ Exponent 2005. Sampling and Analysis Plan for Shelly Ditch Reach 4. Prepared for Raybestos Products Company, Crawfordsville, Indiana. Exponent, Bellevue, WA.

located in the soil and sediments, so that the Reach 4 area was sampled on at least a 40-ft spacing (Figure 1). Approximately 313 samples have been collected in Reach 4. These data include:

April 18–20, 2005 Sampling Event by Exponent 86 samples were collected (includes 4 field duplicate samples; 9 laboratory duplicates not counted in the total)

- Total PCBs
 - Greater than 10 ppm: 20 samples (23.3 percent)
 - Less than 10 ppm: 66 samples (69.7 percent)
- Lead
 - Greater than 400 ppm: two samples (2.3 percent)
 - Less than 400 ppm: 84 samples (97.7 percent)

Previous Sampling Events 227 samples were collected

- PCB
 - Greater than 10 ppm: 41 samples (18.1 percent)
 - Less than 10 ppm: 186 samples (81.9 percent)
- Lead
 - Greater than 400 ppm: three samples (1.3 percent) -
 - Less than 400 ppm: 224 samples (98.7 percent)

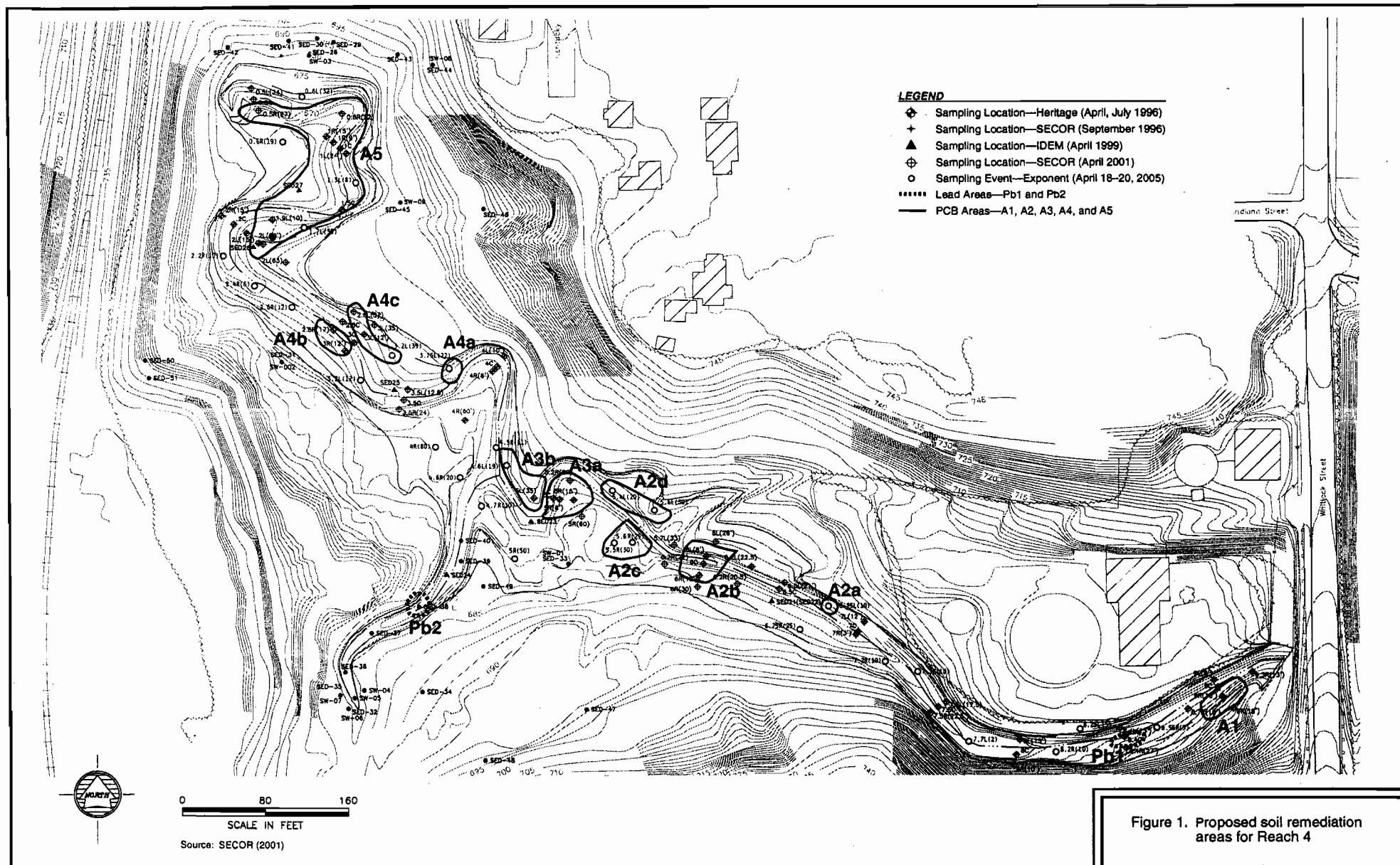
The Reach 4 remediation program objective will be to remove soil and sediment with total PCB concentrations greater than 10 ppm and lead concentrations greater than 400 ppm from the areas described above. Additionally, soil and sediment will be removed at the following locations, which have total detected PCBs above 5ppm: 6.75L(10') (6-12), 3.75L(22') (12-18"), 3.2L(35') (6-12"), and 1.7L(30') (0-6" and 6-12"). These are sample locations that have other depths with total detected PCB concentrations greater than 10ppm. This cleanup will be achieved by using controlled, minimal impact equipment and manual labor via a small access road. If achieved, this will result in an average PCB level of approximately 1.4 ppm or less over the area sampled, including soil and sediments (Figure 1).

Soil with total PCB and lead levels above the cleanup criteria will be removed to depth. In the heavily vegetated areas, this work will be performed using small equipment to protect and decrease the destruction of floodplain woods and vegetation by digging. Large trees will be left in place during removal activities. On completion of the cleanup, areas of soil removal will be sampled to confirm that cleanup goals have been met, then filled with clean soil and revegetated as necessary. The cleanup will also include upgraded security measures such as replacement or upgrading of the existing fencing to minimize access in the upper sections of Reach 4. Access to the downstream section of Reach 4 is difficult, and must be accomplished via the upper sections of the reach.

Confirmation Sampling

Once an area has been excavated, confirmation sampling will be implemented. Confirmation sampling will include the following measures:

- Collecting five surface samples (0-6 in.) per 1,200 ft² of excavated area, then compositing to one sample for analysis. The estimated area of excavation is 22,900 ft² and will require approximately 19 composite samples plus quality assurance and quality control (QA/QC) samples.
- Collecting three surface samples (0-6 in.) (side-middle-side) per 40 ft of access road, then compositing to one sample for analysis. The estimated access road length is 720 ft and will require approximately 19 samples plus QA/QC samples.
- Collecting three composite samples at depth (0-6 in., 6-12 in. and 12-18 in.) (side-middle-side) at three locations: between Area A5 and A4c, between area A4c and A4a, and between A4a and A3b. This will require 9 samples plus QA/QC samples.



Note: Map does not delineate excavation boundaries, but merely identifies sample locations where total detected PCB concentrations exceed 10 ppm.

CONSENT DECREE

ATTACHMENT B

Calumet Containers Site Map

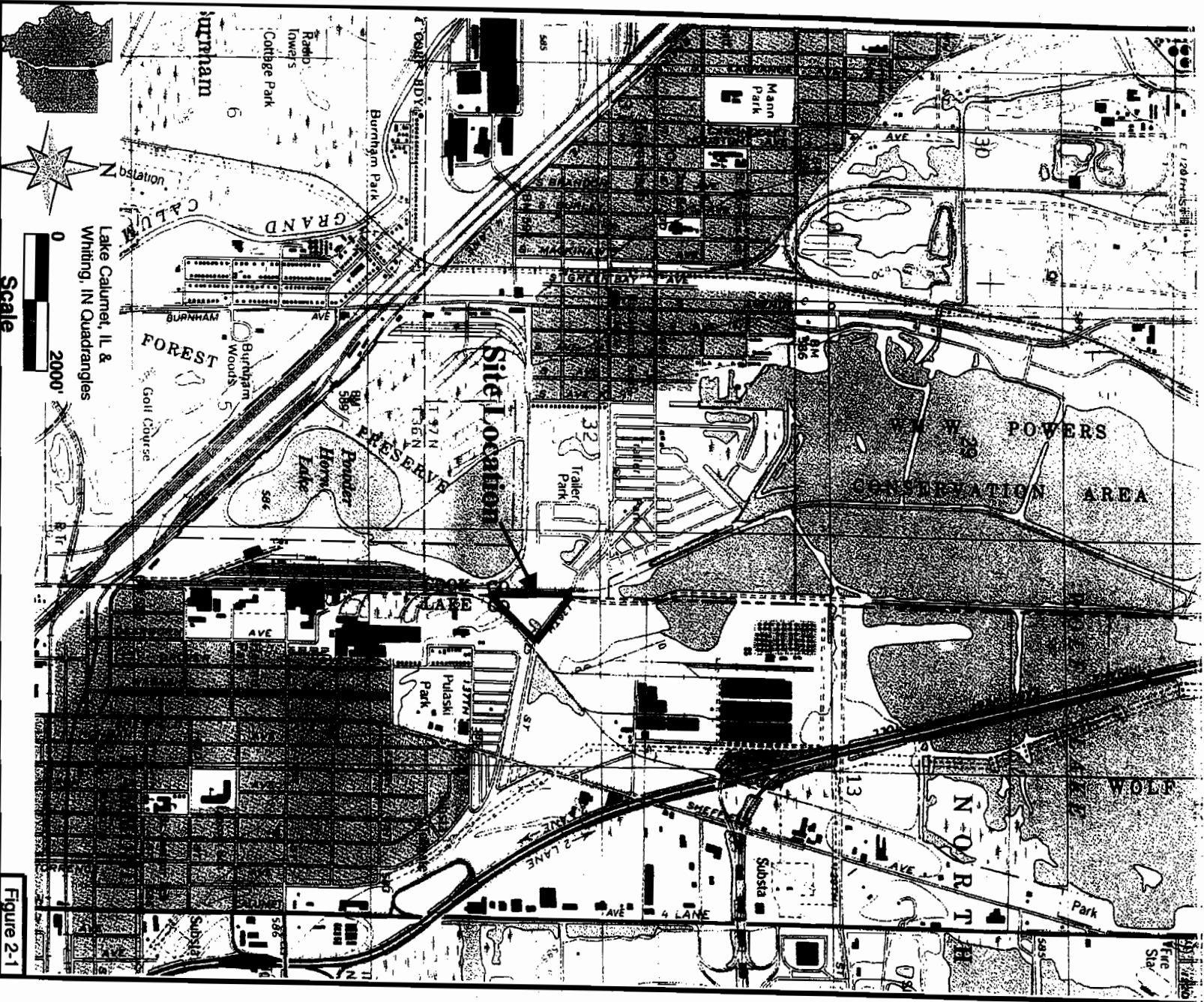


Figure 2-1

WESTON
MANAGERS DESIGN/CONSULTANTS

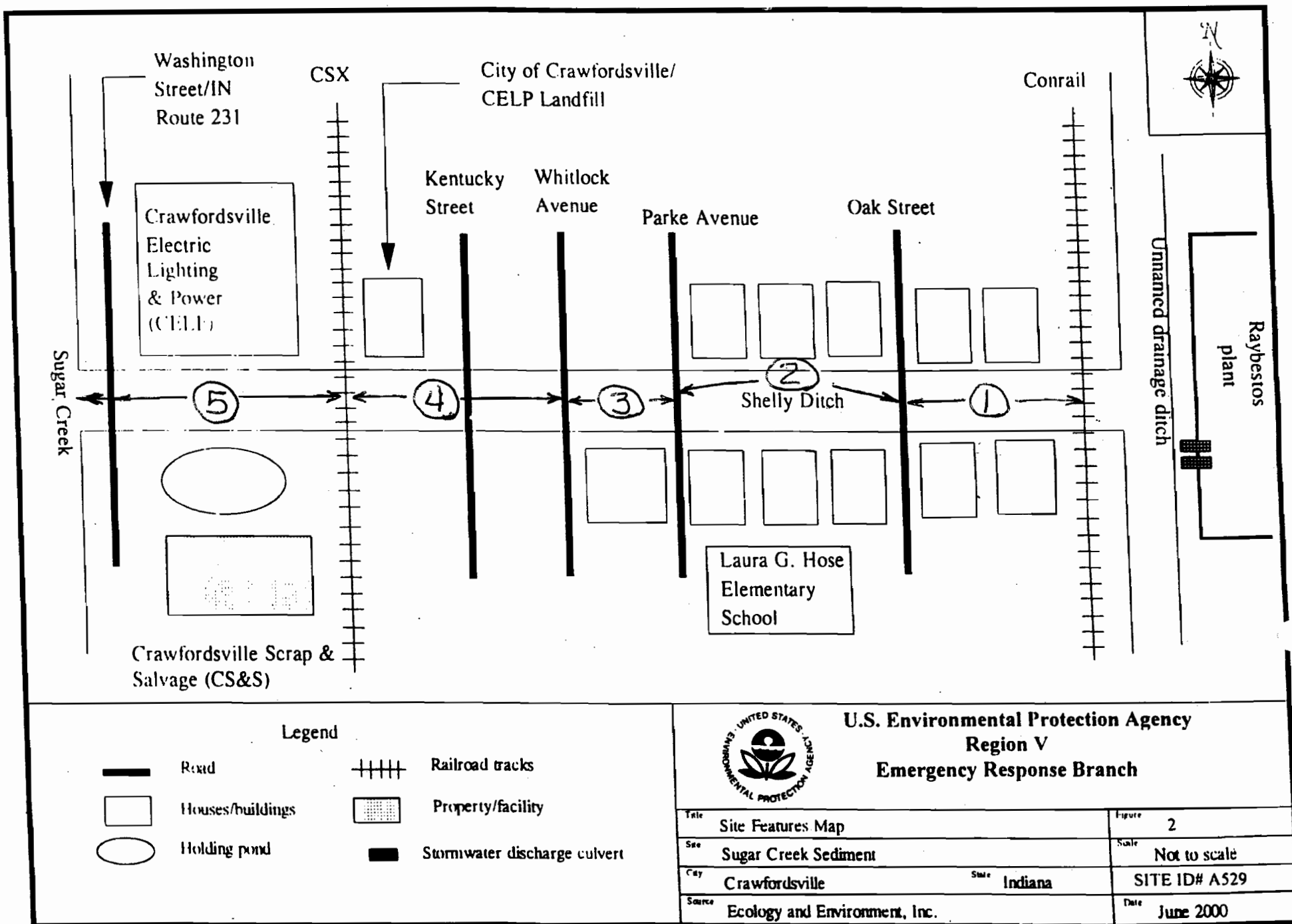
750 E. Bunker Ct.
Suite 500
Vernon Hills, Illinois
60061

TOPOGRAPHICAL SITE LOCATION MAP
CALUMET CONTAINER SITE
Hammond, Lake County, Indiana and Cook County, Illinois

CONSENT DECREE

ATTACHMENT C

Shelly Ditch Map



CONSENT DECREE

ATTACHMENT D

Sugar Creek Remedial Site Waterways Map

MONTGOMERY COUNTY LANDFILL

CITY LANDFILL / CELP

PR MALLORY

SHELLY DITCH / RABESTOS

CRAWFORDSVILLE

CRAWFORDSVILLE SCRAP AND SALVAGE

